IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 891 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JUNAGADH VIBHAGIYA NAGARIK SAHAKARI BANK LIMITED

Versus

KAMLESH BALCHANDRA SHUKLA

Appearance:

MR HJ NANAVATI for Petitioner

MR RD DAVE for Respondent No. 1

MR HH PATEL APP for Respondent No.2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. RULE. Learned counsel for the respondent waives service of Rule.

2. This petition by the original complainant, a co-operative bank, is filed mainly against the original accused No.2, a clerk in the same bank, who is joined as

respondent No.1 herein. Although the petition is styled as a Special Criminal Application under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure and the same is opposed, inter alia, on the ground of its maintainability as such, the parties have agreed and requested to treat it as an application for cancellation of bail granted by the learned Additional Sessions Judge to the accused under Section 439 of the Cr.P.C. Thus, with the consent and at the request of the parties on both sides, the petition is taken up for final hearing and disposed by this judgment.

3. According to the complaint of the co-operative bank, the respondent No.1 (hereinafter referred as 'the accused') introduced the other accused for the purpose of opening a bank account in a false name on 4.12.1998. After depositing a sum of Rs.200 in the newly opened account, a cheque book was issued, Then, on the next day, the accused managed to surreptitiously place three forged vouchers for their being entered in the computer by another clerk. On the next working day, a fresh voucher indicating credit of Rs.10,32,000 in the newly opened account was made on the basis of entries made into the computer as per the three vouchers mentioned earlier. A superior officer suspected some fraud and upon an inquiry, it was found that the accused No.2, in whose name the account was opened, was an altogether different person not residing at the given address. Thus, in short, the offences under Sections 417, 418, 419, 465, 467, 468, 471, 511, 114 read with Section 120-B of the Indian Penal Code were alleged to have been committed by the accused.

3.1 The accused No.2 (the respondent herein) made an application for anticipatory bail before the complaint was filed, but the same was rejected on 11.2.1999. Pursuant to the registration of the criminal case, the accused filed an application for regular bail and upon the same being granted, the order was challenged by way of revision which was allowed and the order of the learned Chief Judicial Magistrate granting bail was set aside with a direction to the accused to surrender before the Court on or before 27.8.1999. However, on 4.8.1999, the accused filed a fresh application under Section 439 of the Cr.P.C. before the learned Sessions Court to continue or release him on bail. It was contended in the said application, inter alia, that the earlier orders cancelling bail were passed on the technical reason of jurisdiction, that in the alleged attempted cheating and forgery which failed, ex facie, the offences under Sections 467 or 409 were not made out and that the

accused was sick and not likely to flee or tamper with the evidence.

3.2 On 5.8.1999, when the learned Additional Sessions Judge made and pronounced the impugned order releasing the accused on bail, the accused is stated to have surrendered and pursued his application. It is this order that the petitioner has challenged with a prayer to cancel the bail of the accused mainly on the grounds that the accused was not arrested and in custody pursuant to the earlier order, that different and contradictory conclusions were drawn by the same learned Sessions Judge while making the first order denying anticipatory bail and in making the impugned order granting regular bail and that the same is perverse and illegal. By filing an affidavit-in-reply, the accused has denied the allegations and the averments in the petition and attributed motives and mala fides while praying to reject the petition only on the ground of alternative efficacious remedy being available under the provisions of the Cr.P.C. It is contended that there was no jurisdictional error and the accused had not violated any of the conditions of bail. It is also contended that the original complaint was filed after 37 days of the alleged incident and he was dragged into the case for extraneous reasons and during the mental and physical torture in the police custody, his resignation was also obtained which he withdrew at the first available opportunity and yet he was not allowed to resume his work. In short, their relations are strained and the accused is suffering even as the other accused is released on bail. The accused has all throughout denied any involvement in the alleged offences.

3.3 Against the backdrop of facts and submissions as above, it appears that the accused had surrendered before the learned Additional Sessions Judge before hearing and disposal of his application for regular bail on 5.8.1999 prior to the date on which he was directed to surrender before the learned Chief Judicial Magistrate. It also appears that during the period between the first order dated 11.2.1999 rejecting the application for anticipatory bail and the impugned order dated 5.8.1999 granting regular bail, the investigation had progressed. While making the impugned order, the Court has had the advantage of perusing the papers of police investigation and the reports on signatures of the accused. The learned counsel for the petitioner has fairly conceded that the relevant considerations in the grant of anticipatory bail and those for the grant of regular bail are different. The observations in the impugned order

about the prima facie case against the accused and the application or non-application of certain sections of the Indian Penal Code had in the nature of things to be tentative and it is not advisable for any Court to enter into the detailed examination of evidence at the stage of granting bail. Thus, the relevant considerations, the material before the Court and the two stages of anticipatory bail and regular bail being altogether different, it is futile to compare the two orders and magnify the discrepancies. It is true that the impugned order does not elaborately discuss the alleged involvement of the accused in the offences defined under several sections of the Indian Penal Code. At the same time, it is not even alleged that the accused has violated any of the conditions on which he was released on bail. Thus, at this stage, the Court is called upon to interfere with the discretionary order which, in the facts and circumstances, is neither illegal, nor without jurisdiction.

4. The learned counsel for the petitioner relied upon the case of STATE OF MAHARASHTRA v. CAPTAIN BUDDHIKOTA SUBHA RAO (AIR 1989 SC 2292) to submit that successive bail applications without any substantial change in fact situation ought not to be entertained. The ratio in that judgment obviously has no relevance to the facts of the present case. Similarly, the judgment in SHAHZAD HASAN KHAN v. ISHTIAQ HASAN KHAN (AIR 1987 SC 1613) is also wholly inapplicable. The learned counsel for the accused relied upon the judgment in NIRANJAN SINGH v. PRABHAKAR RAJARAM KHAROTE (AIR 1980 SC 785) to submit that when the accused had appeared and surrendered before the Sessions Judge, he would have jurisdiction to consider the bail application as the accused would be considered to have been in custody within the meaning of Section 439 of the Cr.P.C. It is recently held by a Full Bench of the Hon'ble Supreme Court in SUBHENDU MISHRA v. SUBRAT KUMAR MISHRA (1999 Cri.L.J. 4063) that, as held in DOLAT RAM v. STATE OF HARYANA [(1995) 1 SCC 345], very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Generally speaking, an attempt to interfere or evade the due course of justice or abuse of the concession granted to the accused in any manner would provide the grounds for cancellation of bail. If any supervening circumstances have rendered it no longer condusive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail, the bail may be cancelled. Thus, as the learned Additional Sessions Judge has passed the order releasing the accused on bail after taking into consideration the relevant

factors and there are no apprehensions about the accused absconding or tampering with the evidence, it would not be proper to interfere with the said order and cancel the bail on the grounds canvassed by the petitioner. Accordingly, this application is rejected and Rule is discharged.

Sd/-

21.12.2000 (D.H.Waghela, J.)

(KMG Thilake)